

## Message Text

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42  
ORIGIN L-03

INFO OCT-01 AF-10 ISO-00 JUSE-00 PER-05 A-01 CPR-02 RSC-01

/023 R

DRAFTED BY L/M/SCA:JABOYD:LMS  
APPROVED BY L/M/SCA:KEMALMBORG  
JUSTICE:BRISTAU(SUBS)  
PPM/LP:WFHIBBS(SUBS)  
L/AF:BKHUFFMAN(INFO)  
AF/EX:EMCGUIRE

----- 051297

R 211418Z NOV 73  
FM SECSTATE WASHDC  
TO AMEMBASSY NIAMEY

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E.O. 11652: N/A  
TAGS: APER, AFSP, NG  
SUBJ: EMBASSY PARTICIPATION IN GON SOCIAL SECURITY SYSTEM

REF: NIAMEY'S OM OF SEPT. 17, 1973

1. DEPT. CANNOT AUTHORIZE SIGNING AGREEMENT TO PROVIDE CERTAIN SOCIAL SECURITY BENEFITS FOR CERTAIN EMPLOYEES OF THE USA IN THE REPUBLIC OF NIGER IN ITS PRESENT FORM GIVEN THE UNCERTAINTY AND MISUNDERSTANDINGS INHERENT IN THE QTE RETROACTIVITY UNQTE QUESTION AS FORMULATED IN THE THIRD AND FOURTH PARAGRAPHS OF THE REF OM.

2. DEPT. AUTHORIZES EMBASSY TO PAY UP TO BUT NO MORE THAN \$500 TO HIRE NIGERIAN LAWYER TO RENDER AN OPINION CONCERNING THE LIABILITY, IF ANY, WHICH THE USG MIGHT OWE TO EMBASSY LOCAL EMPLOYEES FOR SOCIAL SECURITY PAYMENTS FOR PERIODS PRIOR TO THE ENTRY INTO FORCE OF THE SAID AGREEMENT. SAID AUTHORIZATION IS FOR RESEARCH AND ADVICE BY A LAWYER KNOWLEDGEABLE IN NIGERIAN SOCIAL SECURITY

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LAWS, BUT SUCH AUTHORIZATION IS NOT FOR THE INITIATION OR

DEFENSE OF A LAWSUIT BY OR AGAINST THE USG. IF LITIGATION APPEARS AT ALL POSSIBLE, ADVISE DEPT. IMMEDIATELY SO THAT DEPT. OF JUSTICE MAY RETAIN COUNSEL. DEPT. OF JUSTICE RETAINS THE OPTION OF HIRING COUNSEL OTHER THAN LAWYER HERE AUTHORIZED, AND JUSTICE DOES NOT GRANT PERMISSION FOR LAWYER RETAINED PURSUANT TO THIS AUTHORIZATION TO REPRESENT

USG TO OTHER PARTIES NOR TO WAIVE SOVEREIGN IMMUNITY OF USG.

3. AUTHORIZATION IS GRANTED PURSUANT TO TITLE 22 OF U.S. CODE WHICH STATES THAT THE QTE SECRETARY MAY, WITHOUT REGARD TO SECTIONS 49 AND 314 OF TITLE 5, AUTHORIZE A PRINCIPAL OFFICER TO PROCURE LEGAL SERVICES WHENEVER SUCH SERVICES ARE REQUIRED FOR THE PROTECTION OF THE INTERESTS OF THE GOVERNMENT OR TO ENABLE AN OFFICER OR EMPLOYEE OF THE SERVICE TO CARRY ON HIS WORK EFFICIENTLY. UNQTE

4. DEPT. EMPHASIZES THAT SUCH AUTHORIZATION IS UNIQUE AND IS SOUGHT ONLY FOR THE PURPOSE OF BETTER ASCERTAINING THE LIABILITY WHICH NIGERIAN LAW MAY IMPOSE ON THE USG WITH REGARD TO THE POSSIBILITY OF PAYING SUCH QTE RETROACTIVE UNQTE SOCIAL SECURITY PAYMENTS. DEPT. DESIRES WRITTEN OPINION CITING RELEVANT STATUTES AND CASE LAW INTERPRETING SAME. DEPT. REQUESTS AS WELL THAT INFORMATION BE OBTAINED ON WHETHER OTHER DIPLOMATIC MISSIONS HAVE FACED THIS PROBLEM OF RETROACTIVE SOCIAL SECURITY CONTRIBUTIONS AND IF SO HOW SUCH OTHER MISSIONS HAVE RESOLVED THE MATTER. BY AUTHORIZING EMBASSY TO OBTAIN SUCH A LEGAL OPINION, DEPT. DOES NOT RPT NOT INDICATE IN ANY FASHION NATURE OF FUTURE COURSE OF ACTION. DEPT. IS NOT CERTAIN AT THIS POINT IF SUCH QTE RETROACTIVE UNQTE PAYMENTS WOULD BE AUTHORIZED UNDER U.S. LAW. HOWEVER, IF A CONTINUING OBLIGATION WERE TO BE CLEARLY ESTABLISHED IN LEGAL OPINION HERE REQUESTED, DEPT. WOULD SERIOUSLY ENTERTAIN POSSIBILITY OF MAKING APPROPRIATE PAYMENT PROVIDED THAT THE SUM WERE REASONABLE AND APPROPRIATE SAFEGUARDS WERE ESTABLISHED. DEPT. IS ANXIOUS TO AVOID CIRCUMSTANCE IN WHICH AGREEMENT IS LIMITED OFFICIAL USE

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ENTERED INTO ON THE BASIS OF MISUNDERSTANDINGS WHICH RESULT IN TURN IN SUBSEQUENT COSTLY LAWSUITS BY EACH LOCAL EMPLOYEE OF EMBASSY AS HE RETIRES. KISSINGER

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## Message Attributes

**Automatic Decaptoning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 21 NOV 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** collinp0  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1973STATE229456  
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**Document Unique ID:** 00  
**Drafter:** JABOYD:LMS  
**Enclosure:** n/a  
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**Errors:** N/A  
**Film Number:** n/a  
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**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
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**Page Count:** 3  
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**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** NIAMEY'S OM OF SEPT. 17, 1973  
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**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** EMBASSY PARTICIPATION IN GON SOCIAL SECURITY SYSTEM  
**TAGS:** APER, AFSP, NG  
**To:** NIAMEY  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005